

The political-administrative interface in South African municipalities assessing the quality of local democracies

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Abstract

South African municipalities experience serious challenges in dealing with the interface between politicians and officials. Inappropriate political interference in administrative matters as well as strained relations between key political and administrative officials in the municipalities appear to be the order of the day. Oftentimes, the lack of a separation of powers between legislative and executive authority at local government level is blamed for this. This contribution has attempted to draw the attention away from the conflation of legislative and executive authority in the municipal council while still recognising it as an important background. It is suggested that, instead of spending energy on examining a possible separation of powers in local government, the relevant stakeholders (i.e. national lawmakers, municipalities and supervising provinces) should consider smaller institutional changes to the governance makeup of municipalities. Even more importantly, the political and administrative leadership of municipalities and political structures that surround them should be acutely aware of the consequences that inappropriate political leadership has on the functioning of municipalities and therefore on service delivery.

Keywords: Local democracy, Legislation, Governance, South Africa, Municipalities

Introduction

The South African Constitution provides for a national system of local government. It charges local government with a developmental mandate and equips each municipality with a set of constitutionally protected powers. Provincial governments are tasked with supervising and supporting municipalities but play a minor role with regards to regulating the local government system. Municipal councils are democratically elected according to a electoral system that combines constituency (ward) representation with proportional representation. Politically, the local government scene is dominated by the African National Congress which controls the lion's share of municipalities, though with some notable exceptions, particularly in the Western Cape province where the City of Cape Town is controlled by the Democratic Alliance, the national opposition party.

Thus over the last fifteen years, South Africa has transformed its local government system from an illegitimate, racist institution into a democratic institution with a developmental mandate. Since 2000, a new generation of municipalities, led by democratically elected councils, comprise the local government system. By all accounts, local government has made tremendous contributions to the impressive record of extending service delivery to marginalised groups in South Africa. At the same time, the challenges remain daunting. Public perceptions of local government are negative.¹ Many communities and residents see their municipality as a locus of under-performance, corruption and inaccessibility.²

The reasons behind these perceived and real performance failures are multifold and their discussion goes beyond the scope of this paper. However, a particularly disturbing feature of the problems besetting local government is the perception that the

¹ Levels of trust in local government (48.1%) are substantially lower than those in provincial government (59.5%) and the national government (64.3%). See Good Governance Learning Network (GGLN), *Local Democracy in Action: A Civil Society Perspective on Local Governance in South Africa* (Cape Town: GGLN, 2008), 15. See also Department of Cooperative Government and Traditional Affairs *State of Local Government in South Africa* Pretoria: 2009, 11.

² In 2009, the national government conducted a country-wide audit of local government performance which concluded that local government in 'in distress'. See Department of Cooperative Government and Traditional Affairs *State of Local Government in South Africa* Pretoria: 2009.

democratically elected representatives are inaccessible and unresponsive to the needs of their communities.³ People do not see councillors as the champions of their wards, as the guardians for service delivery in the municipality. The allegation is that councils, and therefore councillors, are inward-focused, preoccupied with the goings-on within the political realm of the council and the technicalities of administration. This problem provides the main backdrop to this paper. Why is it that many communities do not trust their councillors and what can be done to remedy this? It is argued that councillors are often held accountable by communities for aspects of service delivery over which the municipality has little or no control. For example, communities may demand answers from councillors regarding policing issues, education, housing subsidies, identity documents, pensions etc (although the Constitution locates competence over these issues with national and provincial governments concurrently). The South African system of intergovernmental relations offers an advanced architecture for intergovernmental service delivery that should absorb and address fragmentation, but the reality is that communities experience disjointed service delivery. However, it is too easy to dispel the levels of mistrust and misgivings of communities over service delivery as the awkward side-effects of the complexities of intergovernmental relations. The continuing spate of community protests, directed at councillors and municipal officials, is evidence of a serious breakdown of relationships between communities and councillors.

This paper examines how the functionality of institutional relationships in municipalities contributes to this breakdown. It investigates whether there are aspects of the structural design of municipalities that prevent councillors from becoming champions of their communities. The paper also examines the interface between politics and municipal administration. It recognises that governance in South Africa may be decentralised but politics is not. It concludes that, while the local party caucus of the ruling party in the municipality should be the platform for rigorous debate of municipal issues on the basis of local concerns, it is often a proxy for regional and sometimes even national politics. While this is inevitable and, to a degree, legitimate in any party-based system of municipal governance, the degree of detailed and undue interference is threatening to drive a wedge between communities and councillors.

³ Department of Cooperative Government and Traditional Affairs *State of Local Government in South Africa* Pretoria: 2009, 37.

The overall argument in this paper is that the functioning of municipal councils is too heavily tilted towards the preparation and adoption of executive and administrative decisions and that, as a result, municipal councils do not hold the municipal executive and the administration accountable. Communities thus regard councillors as ‘complicit’ in the municipal machinery rather than as possible change agents in their quest to engage the municipality.

The conflation of legislative and executive roles in the council by the Constitution is often posited as a design flaw and is therefore a golden thread throughout this discussion. The paper provides some options for institutional change. Importantly, however, diagnosing institutional flaws and suggesting solutions for these flaws is but a small component of the overall improvement required. What will appear paramount in the discussions below is the need for ethical leadership on the part of local government politicians and their administrators, but also on the part of the party political structures that surround the local state.

The findings of this research are based on a series of interviews conducted in 2008 and 2009 with senior municipal officials and politicians throughout the country.⁴ Evidence is also drawn from three workshops conducted in 2009 with municipalities.⁵

Conflation of legislative and executive roles

A feature of local government (that is common to many jurisdictions) is the absence of a strict separation of powers between legislative and executive branches within the local authority. Indeed, section 151(2) of the Constitution provides that both legislative and executive powers are vested in the municipal council. In the South African local government system this is particularly relevant as municipalities are regarded as fully fledged legislative assemblies and are entrusted with an impressive array of legislative powers. In its landmark judgment on local government’s constitutional status, the Constitutional Court made it clear that “local government is no longer a public body exercising delegated powers. Its council is a deliberative legislative assembly with

⁴ In 2008 and 2009, over 30 in-depth interviews were conducted in five municipalities, of which four were controlled by the African National Congress. The interviewees were mayors, councillors, speakers, city managers and senior officials.

⁵ In 2009, three workshops were conducted with municipalities outside of the above sample. The workshops were attended by mayors, councillors, speakers, city managers and senior officials.

legislative and executive powers recognised in the Constitution itself.”⁶ Most of a municipality’s key policy instruments (such as its budget, tariff policies, property rates policies, debt collection policies etc.) are expressed in local legislation, called by-laws.

Statutory law provides for a degree of separation. It establishes a system of municipal executives. In the main, municipalities could be operating one of two systems. The first and most popular system is the executive mayoral system.⁷ The council elects an executive mayor who exercises all executive authority. The executive mayor appoints a mayoral committee to assist him or her.⁸ The second, less popular system is the collective executive system.⁹ The council elects an executive committee that collectively exercises executive authority.¹⁰ Importantly, neither of the two forms of executive have any original executive authority. The council delegates parts of its executive authority to its executive mayor or executive committee. As the delegating authority, the council therefore remains ultimately responsible for the exercise of executive authority and has concomitant controlling powers over the executive. Thus municipalities themselves are the most critical in delineating roles and responsibilities. The legislation offers three instruments that municipalities should utilise for this purpose. The terms of reference (s53 Municipal Systems Act) is a document that outlines roles and responsibilities of political office-bearers, political structures and the municipal manager. The municipality’s delegations (s59 Municipal Systems Act) represent the legal transfers of components of the council’s executive and administrative authority to political office-bearers, political structures and the administration. Finally the council’s rules and orders (s 160(6) Constitution) contain important rules surrounding the role of the speaker (see below).

Increasingly, the conflation of legislative and executive powers is being singled out as the cause for the problems in local governance. The Department of Cooperative Governance and Traditional Affairs (CoGTA) is investigating whether the functions should be separated (Carrim 2009). In this paper, it is argued that the conflation of legislative and executive authority indeed presents a challenge to municipalities. The

⁶ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) at para 26.

⁷ See section 7(b) of the Local Government: Municipal Structures Act 117 of 1998.

⁸ ss 54-60 of the Local Government: Municipal Structures Act 117 of 1998.

⁹ See section 7(a) of the Local Government: Municipal Structures Act 117 of 1998.

¹⁰ ss 42-53 of the Local Government: Municipal Structures Act 117 of 1998.

division of responsibility between the two branches of government is relatively clear at national and provincial level, where the Constitution itself separates the two.¹¹ Municipalities, however, are tasked with managing these complex relationships in a small environment. The conflation of legislative and executive authority in the municipal council presents three specific challenges to municipalities. Firstly, it complicates the position of the speaker of the council. Secondly, the question as to who is in charge of the municipal administration becomes more difficult to answer. Thirdly, it invites municipalities to adopt inappropriate committee systems. These three challenges are discussed in turn. With respect to all three challenges, it is argued that separating the executive and legislative roles will not materially affect governance in a positive way. Rather the solution lies in a better utilisation of the existing policy and legal frameworks and, importantly, effective political and administrative leadership.

The role of the speaker

The first challenge relates to the role of the speaker. All municipal councils are instructed by law to elect a speaker from among their members.¹² The speaker of the council is responsible, in the main, for the management of council meetings and for enforcing the Code of Conduct for Councillors¹³ which regulates ethical conduct of councillors. In a context where legislative and executive roles are separated, such as the parliamentary system at national and provincial level, the role of the speaker is clear. He or she is in charge of the legislative chamber and plays little, if any, role in the executive of which he or she is not a member. Administratively, the speaker oversees the implementation of the assembly's budget, which is separate from the executive's budget.

In the local government context, where the executive and legislative roles are merged, the situation is markedly different. Firstly, in constitutional terms, the speaker is a member of the executive because the council is designated as the executive by the Constitution. Even though much of the executive decision making authority may be delegated by the council to the executive committee or executive mayor (particularly in larger municipalities), there are always executive and administrative decisions that the full council must take – under the chairpersonship of the speaker.¹⁴ Administratively, the

¹¹ See ss 44, 85, 104 and 125 of the Constitution.

¹² S 36 of the Local Government: Municipal Structures Act 117 of 1998.

¹³ Schedule 1 of the Local Government: Municipal Systems Act 32 of 2000.

¹⁴ There are many provisions in the local government legislation that provide that certain executive or administrative decisions can only be taken by the full council. The appointment of

office of the speaker is not separate from the municipal administration. The municipal council does not operate a separate budget from the administration's budget. The speaker is therefore dependent on the municipal executive and the municipal administration when it comes to the formulation and the implementation of his or her budget.

As noted above, municipal legislation defines the role of the speaker as mainly related to the traditional speaker's role of chairing council meetings and enforcing the Code of Conduct for Councillors.¹⁵ Ordinarily, the speaker is the driver of council investigations into transgressions of the Code of Conduct. The law indicates that the speaker must conduct an investigation when he or she suspects a transgression.¹⁶ Often, the speaker is assisted in this by a council committee. However, it leaves room for further delegation of responsibilities to the office of the speaker.

In practice, the role definition of speaker has been fraught with difficulty. Ever since the introduction of the office of the speaker in 2000, municipalities have reported conflicts, internal tensions and political battles over the responsibilities of the speaker vis-à-vis the mayor (De Visser and Akintan 2008:15).¹⁷ At the very least, these conflicts often contributed to a toxic environment and an inward-focused predisposition of the council. In the worst cases, they brought about political stalemates and disruptions to service delivery. Frequently, the executive leadership of the municipality is reluctant to entrust the speaker with enforcing the Code of Conduct for councillors, and speakers complain of persistent meddling in council investigations. Conversely, there are instances where the speaker has been alleged to abuse his or her investigative authority for political ends. This is particularly the case in those municipalities where the offices of the speaker and the mayor have been allocated to cement coalitions across parties or to appease opposing political factions within one party.

the municipal manager (s82(1)(a) Municipal Structures Act) is a notorious example but there are many others such as those related to the sale of immovable assets (s14(1) MFMA), writing off irrecoverable debt from unauthorised, irregular, fruitless or wasteful expenditure (s32(2) MFMA) etc

¹⁵ s 37 Municipal Structures Act.

¹⁶ Item 14 Schedule 1 Municipal Structures Act.

¹⁷ See also Department of Cooperative Government and Traditional Affairs *State of Local Government in South Africa* Pretoria: 2009, 72 where role confusion among the members of the 'troika' (i.e. mayor, speaker and chief whip) is referred to as a root cause for instability in municipalities.

There are institutional and legal solutions that can be considered. As the problem is rooted in the conflation of legislative and executive powers, the separation of these powers would contribute to a clearer division of roles between the speaker and the municipal executive. The most drastic solution would be to abolish the office of the speaker altogether and return to the system whereby the mayor chairs council meetings. Code of Conduct issues could be assigned to council committees (De Visser and Akintan 2008: 22). However, the office of the speaker is now an entrenched institution populated by full-time office-bearers.¹⁸ The abolition will face considerable political opposition. Furthermore, to its credit, the office of the speaker has in many municipalities contributed positively to the development of community participation strategies and practices. The Code of Conduct for Councillors could be revisited; even judges have commented that the Code is not a shining example of clear legislative drafting.¹⁹ It could be changed to ensure that the role of the speaker – and particularly the interface between the speaker and other council structures and office-bearers around Code of Conduct issues – is set out in clearer terms.

It is, however, suggested that institutional and legal solutions are not necessarily the answer. The problems can be addressed within the current legislative framework. Research suggests that many municipalities have not adequately dealt with the delineation of roles and responsibilities in the instruments offered by the legislation – terms of reference, delegation and rules and orders (De Visser and Akintan 2008: 20). In many municipalities, the poor quality of these instruments contributes to the creation of unnecessary grey areas and overlap in responsibilities. The terms of reference, in particular, is a mandatory instrument that is specifically designed to deal with overlapping responsibilities, grey areas and disputes. Most municipalities have not adopted this instrument. The problems often emanate from poor political leadership and a treatment of these offices as a means of access to power and resources. The dedication of the office of the speaker as full-time position has been an important contributing factor in this regard. The adoption of a terms of reference, which is a soft document, outlining the organisational values, dispute resolution rules, reporting rules etc requires a special type of leadership from the municipality. It is adopted by ordinary majority resolution but

¹⁸ See Local Government: Municipal Structures Act (117/1998): Policy framework for the designation of fulltime councillors GN 2073, Government Gazette 23964, 18 October 2002.

¹⁹ In *Van Wyk v Uys* NO (2001) JOL 8976 (C), judge Dennis Davis commented that the Code of Conduct “does not represent a glittering example of the quality of legislative drafting to which the country is entitled”.

must be endorsed by every councillor for it to be effective. There is no point in 51% of the councillors respecting the role of the speaker as outlined in terms of reference when the other 49% of the councillors do not. The adoption and implementation of the terms of reference therefore requires particularly skilful leadership that crosses political and factional divides in order to achieve better governance.

Political-Administrative interface

The second challenge relates to the so-called political-administrative interface, i.e. who directs the municipal administration? Once again, in a context where legislative and executive powers are constitutionally separated, this question is less pertinent. For example, at a national level, the administration is directed by the national executive, i.e. the President with his or her cabinet. Parliament oversees the executive and may call in administrators to account to it, but it has no immediate authority over those administrators. A similar situation prevails at provincial level.

Local government, again, works in a more complex system. Since the Constitution designates the municipal council as the executive, it is essentially the employer of all municipal staff. Legislation has sought to separate council from the administration to some extent. The Municipal Systems Act mandates the municipal council to appoint senior managers (i.e. the municipal manager and managers that report to him or her, see s 82(1)(a) Municipal Structures Act and s 56 Municipal Systems Act), and further appointments are made by the administration itself. The Code of Conduct for Councillors includes a provision that prohibits councillors from interfering in the administration (item 11 Schedule 1 Systems Act). Taking a harder line of separation, the Municipal Finance Management Act has barred councillors from taking part in tender decisions (s 117 MFMA) and includes many provisions that seek to separate the council from the administration.

In practice, however, the political-administrative interface has become the ‘achilles heel’ of many municipalities. There is no doubt that councillors, members of municipal executives and officials are struggling to define clear roles amongst themselves. This is aggravated by undue political interference by political parties. There is growing concern around the inappropriate relationship between regional party structures and municipalities. There are reports of instances where regional party structures seek to operate municipalities by remote control.

Regional party structures should focus on recruitment and deployment of suitable candidates for political office in municipalities, ensuring and overseeing ethical behaviour among their cadres, and providing overall strategic guidance in the form of party political programmes. Instead, they often seem to focus their attention on two aspects: staff appointments and tenders.

The strongest evidence yet comes from a recent court case, involving the appointment of a municipal manager for Amathole District Municipality (*Vuyo Mlokoti v Amathole District Municipality and Mlamli Zenzile* (2009) 30 ILJ 517 (E), 6 November 2008). The court found that, under instruction from the ANC Regional Executive, the majority ANC caucus members of the council approved the appointment of one of the two final contenders for the position, despite the fact that the other candidate had outperformed him in the interview and assessments. The judge in the matter concluded that:

... the involvement of the Regional Executive Council of the ANC ... constituted an unauthorized and unwarranted intervention in the affairs of [the municipality]. It is clear that the councillors of the ANC supinely abdicated to their political party their responsibility to fill the position of the Municipal Manager with the best qualified and best suited candidate on the basis of qualifications, suitability and with due regard to the provisions of pertinent employment legislation This was a responsibility owed to the electorate as a whole and not just to the sectarian interests of their political masters...

[The council] has demonstrated a lamentable abdication of its responsibilities by succumbing to a political directive from an external body, regardless of the merits of the matter. It continues, with an equally lamentable lack of insight into its conduct, to contend that it was proper for it to have done so.

Too many reports of fraud and corruption in municipalities point towards inappropriate interference exercised by political office-bearers. A particular manifestation of the conflation of party and state at local government level is the practice whereby party office-bearers populate the municipal administration. In other words, a regional secretary or branch chairperson would be appointed as an official in the municipal administration. The rationale is not difficult to grasp: as senior municipal officials are generally paid better than councillors, their seats are often more attractive than the political seats. In a recent speech, commemorating the 98th birthday of the African National Congress, President Jacob Zuma referred to this phenomenon. He suggested that the senior office-bearers in political parties should not be permitted to be municipal officials. The

President attracted the ire of the South African Municipal Workers Union,²⁰ but the consequences of such a conflation of political and administrative office are often dire. It results in a municipality being ‘rewired’ in a very damaging way. The normal lines of political accountability do not apply and the administration takes on a strangely dominant role in the municipal polity. Anecdotes of municipal officials taking political precedence over their mayor and the resultant comedy of protocol as well as the so-called ‘untouchables’ in the administration have become a source of great hilarity in local government. However, the sad reality is that the municipalities where this phenomenon manifests itself often decline into utter bureaucratic and political paralysis as a result of sliding staff morale and perennial power struggles. It does not take long for this bureaucratic and political misery to spill over into service delivery. Ultimately, communities bear the brunt of this political mismanagement.

The municipal governance system is folded around political parties and depends on political parties to provide support, guidance and political accountability. The Deputy Minister for Cooperative Governance and Traditional Affairs recently remarked: “...it’s not for the party structures to micro-manage councillors, especially as this has sometimes less to do with ensuring that councillors perform effectively and more to do with influencing tenders and narrowly interfering in appointment of staff. Municipal structures should not be treated almost like sub-committees of party structures” (quoted in Local Government Research Centre 2009: 16). If party structures serve narrow personal or factional interests, this is fundamentally detrimental to the developmental local government enterprise. In addition, councillors themselves are increasingly resisting the interference by outside party structures. Such interference drives a wedge between councillors and their communities and councillors feel mistrusted by their own political organisations.

What is the way forward with regard to the problem of undue political interference, considering that political parties are vital to the survival of the local government system? Would the separation of legislative and executive roles help? There is some argument to be made that the conflation of legislative and executive roles in local government adds fuel to the fire in respect of political interference. Currently, the council as an assembly can be the *locus* of the type of executive and administrative decision making that deals

²⁰ See [Hwww.samwu.org.za](http://www.samwu.org.za)H and the union’s Press Statement of 3 February 2010.

with the hard and immediate allocation of resources, jobs and power, rather than being limited to policy making, appropriation and oversight which is less attractive to the proverbial political fraudster. In that line of argument, separating the legislative and executive roles may thus remove the incentive for party structures to interfere in council decision making. However, it is suggested that transforming the council into a legislative and oversight body will not do much to mitigate undue party interference. Inappropriate interference would merely focus more directly on the municipal executive and perhaps even intensify with a clear target in sight.

What is suggested is a combination of political and institutional solutions. Firstly, political parties need to recast their roles vis-à-vis local government, particularly at regional level. While political party structures at national level cannot be accused of endorsing the rogue practices of some regional party structures, they clearly have done too little to make them stop. The position of the local caucus of councillors needs to be redefined. It should be repositioned as a political structure that is subject to strategic and ethical oversight by a party structure, which fundamentally trusts its 'deployees' to take decisions and does not second-guess or by-pass it.

Secondly, it seems strange that the local government system somehow agrees to the combination of party political office with municipal officialdom. A translation of the practice to the national government polity may indicate how strange the combination is. Would it be acceptable for the Secretary-General of the African National Congress to be a Director-General in a national department, or for the Chairman of the Democratic Alliance's Federal Council to be a head of department in the Western Cape provincial government? Such a conflation of party-political and administrative office would undoubtedly raise eyebrows, yet the combination at municipal level is condoned. It is submitted that this is an area where specific institutional solutions are available and will yield positive results without major disruption. A specific provision should be inserted in the Municipal Systems Act to create a barrier between municipal officialdom and holding senior office in a political party. This would prod politicians to decide whether they wish to pursue a political or an administrative career, rather than seeking to combine both to the detriment of municipal governance. In addition, political parties themselves could insert a similar barrier in their internal rules.

Thirdly, the rules in the Municipal Systems Act surrounding staff appointments and staff discipline should be clarified. Practice indicates a number of areas of confusion. The legislation limits the municipal council's involvement with staff appointments to three aspects. Firstly, the council adopts human resources policies, including a recruitment policy, to be implemented by the municipal manager. Secondly, as indicated earlier, the council appoints senior managers. Thirdly, the council oversees the implementation of its human resource policies. However, practice suggests that council or councillors seek involvement with human resources issues on a variety of other levels. For example, the practice of councillors being part of appointment committees for staff other than senior management is not unknown, albeit clearly illegal. Also common is the practice whereby councillors sit in on staff interviews as observers.

Another major area of confusion is the position of managers. They are appointed by the council but report to the municipal manager, and the law is not clear as to where the responsibility and authority lies to discipline these officials if they violate staff codes. This is often an arena where politics and administration cross swords because these senior managers are political appointments (made by the council). Add to this the worst case scenario, namely where the senior manager is an office-bearer in the structures of the ruling party, and there is no realistic way out of the conundrum. It seems clear that the rules regarding staff appointments and discipline need to be clarified. The Municipal Systems Act should follow the same hard line as the Municipal Finance Management Act and limit the council's role to the abovementioned three aspects. A serious debate is also required on the need for the municipal council to appoint managers that report to the municipal manager. This configuration is not followed in the national or provincial public services, where Deputy Director-Generals are appointed by the accounting officer of the relevant department. Why are appointments of senior managers in local government explicitly labeled as political appointments? The rationale may have been to seek synergy between the administration and the council, and it may have fitted the overall theme of a council that is legislator and executive in one. However, the practice is one whereby the appointment of senior managers is potentially a source of conflict and tension between the municipal manager and his or her political masters. That tension could be mitigated by placing the responsibility squarely with the municipal manager (perhaps in consultation with the mayor).

Committee systems

The political functioning of municipal councils is critical to ensure sound democratic practices that facilitate responsiveness of political structures, informed decision making and oversight. With regard to the latter, the Auditor-General, in presenting the 2007/08 audit outcomes for local government observed that financial management of municipalities improved significantly in areas where a ruling party is pressured by opposition parties (Pressly 2009). This important observation points to the value of democratic oversight as an indispensable element of good governance.

By conflating legislative and executive roles in the council the current system of local government does not create ideal circumstances for political oversight of the council over the executive and the administration. However, this by no means exonerates municipalities from using the system to facilitate oversight. In fact, the research suggests that many municipalities have adopted political structures that hamper, rather than improve oversight. This relates specifically to committee systems.

It goes without saying that portfolio committees are critical for the functioning of any council. In any functioning democratic assembly, the hard work is done in the committees where the impact of decisions on communities and residents are often discussed in detail. The same applies to municipalities. It is only in the smallest municipalities where committee systems are superfluous. In all others, they are critical to ensure robust engagement between councillors, municipal executives and the administration. In terms of the law, municipalities have the freedom to fashion their own committee systems. Sections 79 and 80 of the Municipal Structures Act provide the basis for municipal committees. 'Section 79 committees' comprise all or most parties on the council and report to the plenary council. They are chaired by a councillor who is not a member of the municipal executive. 'Section 80 committees' also comprise all or most parties on the council but report to the municipal executive. The committee is chaired by a member of the executive (i.e. a member of the executive committee or mayoral committee) and is designed to assist the executive. Municipalities may adopt combinations of the above two systems.

Practice however suggests that most municipalities opt for the adoption of section 80 committees for all portfolios. It is usually only the Code of Conduct issues that are dealt with by a section 79 committee. Municipalities in the Gauteng province are the

exception; most of them have adopted section 79 committees. The result of the practice in other provinces is that municipal councils operate in terms of a committee system that exists to support the executive. The normal course of events is then that items (reports, recommendations, draft resolutions etc.) are prepared by the administration and then discussed and refined by the section 80 committee under the chairpersonship of the member of the municipal executive. The executive submits the item to the plenary council meeting. In most cases, the deliberation at the plenary meeting is minimal as the preparatory work is done in the committee. This practice does not assist in creating sound democratic governance, responsive municipal councils and oversight by the council over the executive and administration. Portfolio committees should not be reduced to working groups where decisions are refined and political coalitions are welded, even though that may be part of their role. They must also be the engines of democratic assemblies where policies and decisions are interrogated, progress is measured and the hard questions are asked in an open and vigorous debate that takes place on the basis of substantive issues rather political divisions.

More emphasis on the role of committees in exercising oversight over the municipal executive and administration should contribute to more responsive councils. When oversight and the measuring of progress is the desired outcome of a committee meeting, it provides a councillor with the platform to raise the concerns of his or her constituency. On the other hand, when the desired outcome of a committee meeting is the preparation of an item to be submitted to the municipal executive, that same councillor will undoubtedly feel constrained, if he or she is not already overwhelmed by the technical nature that usually characterises these draft decisions.

It is therefore important for the improvement of local democracies that municipal committee systems function not only to support the municipal executive and prepare council decisions but also as committees that exercise oversight over the municipal executive and administration. This can be achieved without separating legislative from executive roles; municipalities should adopt section 79 committees, chaired by ‘ordinary’ councillors, that operate to oversee the administration. In many instances, this will require significant investment in the functioning and skills of councillors that are designated to chair section 79 committees. In fact, municipalities will be quick to argue that there are too few councillors of the calibre required to chair a section 79 committee. However, if

political parties and municipalities are serious about enhancing local democracies, more councillors need to be empowered to take up these roles.

Conclusion

This paper has dealt with a number of critical governance challenges faced by municipalities in South Africa. It is suggested that these challenges deserve the attention of municipalities and political parties, but also of supervising provincial and national governments. The quality of local democracies needs to be seriously improved if a more constructive relationship between communities and their municipalities is to be achieved. The argument has attempted to shift the primary focus of attention away from the conflation of legislative and executive authority in the municipal council, while nevertheless recognising its significance. It is suggested, therefore, that instead of spending energy on examining a possible separation of powers in local government, the relevant stakeholders (i.e. national lawmakers, municipalities and supervising provinces) should consider smaller institutional changes to the governance make-up of municipalities. Even more importantly, the political and administrative leadership of municipalities and the political structures that surround them should be acutely aware of the disastrous consequences that inappropriate behavior and political interference can have on the functioning of municipalities and therefore on service delivery.

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